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AMENDED IN SENATE JUNE 18, 1997

AMENDED IN ASSEMBLY MAY 29, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1612

Introduced by Assembly Members Alby and Ortiz

(Coauthors: Assembly Members Ackerman, Aguiar, Alquist, Aroner, Ashburn, Baca, Baldwin, Battin, Baugh, Bordonaro, Bowler, Brewer, Brown, Bustamante, Campbell, Cardenas, Cardoza, Cunneen, Davis, Ducheny, Escutia, Figueroa, Firestone, Frusetta, Gallegos, Goldsmith, Granlund, Havice, Honda, House, Kaloogian, Keeley, Knox, Kuehl, Kuykendall, Leach, Lempert, Leonard, Machado, Martinez, Mazzoni, Migden, Miller, Morrissey, Morrow, Napolitano, Olberg, Oller, Pacheco, Papan, Perata, Poochigian, Prenter, Pringle, Richter, Runner, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, and Woods)

(Coauthors: Senators Alpert, Calderon, Costa, Dills, Greene, Hayden, Haynes, Hughes, Karnette, Kelley, Knight, Leslie, McPherson, Monteith, O'Connell, and Rainey)

May 22, 1997

An act to add Sections 44332.6, 44346.1, 44830.1, and 45122.1 to the Education Code, relating to school employees, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1612, as amended, Alby. School employees.

(1) Existing law authorizes a county or city and county board of education to issue temporary certificates, valid for not more than one calendar year, for the purpose of authorizing salary payments to certified employees whose teaching credential applications are being processed or to personnel employed in children's centers or other preschool educational programs whose permit applications are being processed. Existing law also authorizes the issuance of a temporary certificate of clearance, as specified.

This bill would require a county or city and county board of education to obtain a criminal record summary about the applicant from the Department of Justice before issuing a temporary certificate and would prohibit the issuance of a temporary certificate if the applicant has been convicted of a violent or serious felony, as defined. The bill would also require a school district to obtain a criminal record summary about the applicant from the Department of Justice before issuing a temporary certificate of clearance and would prohibit the issuance of a temporary certificate of clearance if the applicant has been convicted of a violent or serious felony, as defined.

(2) Existing law requires the Commission on Teacher Credentialing to deny an application for the issuance of a credential or for the renewal of a credential made by an applicant who has been determined to be a sexual psychopath, as specified, has been convicted of any sex offense, as defined, has been convicted of any controlled substance offense, as defined, or has been found to be insane through a criminal proceeding, as specified.

This bill would require the commission to deny any application for the issuance of a credential made by an applicant who has been convicted of a violent or serious

felony, as defined, and to revoke any credential issued to a person whose employment has been terminated by a school district because the person has been convicted of a violent or serious felony, as defined.

(3) Existing law requires the governing board of a school district to require each person to be employed, or employed, in a position not requiring certification qualifications to have fingerprint cards prepared by a local public law enforcement agency, requires that agency to transmit the cards to the Department of Justice, and requires the Department of Justice to ascertain whether the applicant or employee has been arrested or convicted of any crime and to furnish all information of which it has a record and which pertains to the person whose fingerprints were transmitted. Existing law authorizes the exemption from these provisions of substitute and temporary employees, employed for less than a school year.

Existing law requires the Commission on Teacher Credentialing to adopt rules and regulations requiring every applicant for a credential or the renewal of a credential to submit reasonable evidence of identification and good moral character. The adopted rules and regulations are required to include, among other things, the offenses that constitute grounds for the mandatory denial or revocation of a credential. Existing law requires each applicant for a teaching credential or the renewal of a teaching credential to submit with his or her application duplicate personal identification cards with his or her fingerprints. Existing law authorizes the Commission on Teacher Credentialing to require the production of information, records, reports, and other data from any public agency.

This bill would prohibit, *as specified*, school districts, as defined to also include county offices of education and the state special schools, from employing ~~or retaining in employment~~ any individual, whether in a certificated or classified position, who has been convicted of a violent or serious felony, as defined. *The bill would prohibit, as specified, a school district from retaining in employment a current certificated or classified employee who has been convicted of a violent or serious felony, and who is a temporary, substitute,*

or probationary employee, as specified. The bill would also apply this prohibition to charter schools. The bill would require the Department of Justice to directly notify the school district, as specified, when an individual who is an applicant for employment, regarding the criminal information of the applicant. The bill would require the Department of Justice to forward a copy of that information to the Commission on Teacher Credentialing when the individual is an applicant for a position requiring certification qualifications. To the extent these provisions would operate to impose new duties on local education entities, this bill would impose a state-mandated local program.

(4) The bill would appropriate \$5,000,000 from the General Fund to the Department of Justice for the purposes of implementing an electronic fingerprinting system with terminals located statewide, as specified, and managed through the Department of Justice.

(5) This bill would provide that it will become operative only if AB 1610 of the 1997–98 Regular Session is enacted.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(7) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 44332.6 is added to the
2 Education Code, to read:



1 44332.6. (a) (1) Before issuing a temporary
2 certificate pursuant to Section 44332, a county or city and
3 county board of education shall obtain a criminal record
4 summary about the applicant from the Department of
5 Justice and shall not issue a temporary certificate if the
6 applicant has been convicted of a violent felony, ~~as~~
7 ~~defined in subdivision (c) of Section 667.5 of the Penal~~
8 ~~Code, or a serious felony, as defined in subdivision (c) of~~
9 ~~Section 1192.7 of the Penal Code.~~

10 ~~(b) or serious felony.~~

11 (2) Before issuing a temporary certificate of clearance
12 pursuant to Section 44332.5, a school district shall obtain
13 a criminal record summary about the applicant from the
14 Department of Justice and shall not issue a temporary
15 certificate of clearance if the applicant has been
16 convicted of a violent ~~felony, as defined in subdivision (c)~~
17 ~~of Section 667.5 of the Penal Code, or serious felony, as~~
18 ~~defined in subdivision (c) of Section 1192.7 of the Penal~~
19 ~~Code.~~

20 ~~(c) or serious felony.~~

21 (b) This section applies to any violent or serious
22 offense which, if committed in this state would have been
23 punishable as a violent or serious felony.

24 (c) *For purposes of this section, a violent felony is any*
25 *felony listed in subdivision (c) of Section 667.5 of the*
26 *Penal Code and a serious felony is any felony listed in*
27 *subdivision (c) of Section 1192.7 of the Penal Code.*

28 (d) Notwithstanding subdivisions (a) and (b), a
29 person shall not be denied a temporary certificate or a
30 temporary certificate of clearance solely on the basis that
31 he or she has been convicted of ~~a crime specified in~~
32 ~~subdivisions (a) and (b) a violent or serious felony~~ if the
33 person has obtained a certificate of rehabilitation and
34 pardon pursuant to Chapter 3.5 (commencing with
35 Section 4852.01) of Title 6 of Part 3 of the Penal Code.

36 SEC. 2. Section 44346.1 is added to the Education
37 Code, to read:

38 44346.1. (a) The commission shall deny any
39 application for the issuance of a credential made by an
40 applicant who has been convicted of a violent or serious

1 felony and shall revoke any credential issued to a person
2 whose employment has been denied employment or
3 terminated pursuant to Section 44830.1.

4 (b) This section applies to any violent or serious
5 offense which, if committed in this state, would have been
6 punishable as a violent or serious felony.

7 (c) For purposes of this section, a violent felony is any
8 felony listed in subdivision (c) of Section 667.5 of the
9 Penal Code and a serious felony is any felony listed in
10 subdivision (c) of Section 1192.7 of the Penal Code.

11 (d) Notwithstanding subdivision (a), a person shall
12 not be denied a credential nor shall a credential be
13 revoked solely on the basis that the applicant or holder
14 has been convicted of a ~~crime specified in subdivisions (a)~~
15 *violent or serious felony* if the person has obtained a
16 certificate of rehabilitation and pardon pursuant to
17 Chapter 3.5 (commencing with Section 4852.01) of Title
18 6 of Part 3 of the Penal Code.

19 SEC. 3. Section 44830.1 is added to the Education
20 Code, to read:

21 44830.1. (a) In addition to any other prohibition or
22 provision, no person who has been convicted of a violent
23 or serious felony shall be employed ~~—or retained in~~
24 ~~employment~~ by a school district in a position requiring
25 certification qualifications or supervising positions
26 requiring certification qualifications. *A school district*
27 *shall not retain in employment a current certificated*
28 *employee who has been convicted of a violent or serious*
29 *felony, and who is a temporary employee, a substitute*
30 *employee, or a probationary employee serving before*
31 *March 15 of the employee's second probationary year.*

32 (b) This section applies to any violent or serious
33 offense which, if committed in this state, would have been
34 punishable as a violent or serious felony.

35 (c) (1) For purposes of this section, a violent felony is
36 any felony listed in subdivision (c) of Section 667.5 of the
37 Penal Code and a serious felony is any felony listed in
38 subdivision (c) of Section 1192.7 of the Penal Code.

(2) For purposes of this section, the term “school district” has the same meaning as defined in Section 41302.5.

(d) When the Department of Justice ascertains that an individual who is an applicant for employment by a school district has been convicted of a violent or serious felony, the department shall notify the school district of the criminal information pertaining to the applicant. The notification shall be delivered by telephone and shall be confirmed in writing and delivered to the school district by first-class mail. The Department of Justice also shall send by first-class mail a copy of the criminal information to the Commission on Teacher Credentialing.

(e) Notwithstanding subdivision (a), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a ~~crime specified in subdivisions (a)~~ violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(f) Notwithstanding subdivision (e), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a serious felony that is not also a violent felony if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the school district in which he or she is a resident.

(g) Notwithstanding any other provision of law, when the Department of Justice notifies a school district by telephone that a current temporary employee, substitute employee, or probationary employee serving before March 15 of the employee’s second probationary year, has been convicted of a violent or serious felony, that employee shall immediately be placed on leave without pay. When the school district receives written

1 notification of the fact of conviction from the
2 Department of Justice, the employee shall be terminated
3 automatically and without regard to any other procedure
4 for termination specified in this code or school district
5 procedures unless the employee challenges the record of
6 the Department of Justice and the Department of Justice
7 withdraws in writing its notification to the school district.
8 Upon receipt of written withdrawal of notification from
9 the Department of Justice, the employee shall
10 immediately be reinstated with full restoration of salary
11 and benefits for the period of time from the suspension
12 without pay to the reinstatement.

13 (h) Notwithstanding Section 47610, this section
14 applies to a charter school.

15 SEC. 4. Section 45122.1 is added to the Education
16 Code, to read:

17 45122.1. (a) In addition to any other prohibition or
18 provision, no person who has been convicted of a violent
19 or serious felony shall be employed ~~—or retained in~~
20 ~~employment~~ by a school district pursuant to this chapter.
21 A school district shall not retain in employment a current
22 classified employee who has been convicted of a violent
23 or serious felony, and who is a temporary, substitute, or
24 a probationary employee who has not attained
25 permanent status.

26 (b) This section applies to any violent or serious
27 offense which, if committed in this state, would have been
28 punishable as a violent or serious felony.

29 (c) (1) For purposes of this section, a violent felony is
30 any felony listed in subdivision (c) of Section 667.5 of the
31 Penal Code and a serious felony is any felony listed in
32 subdivision (c) of Section 1192.7 of the Penal Code.

33 (2) For purposes of this section, the term “school
34 district” has the same meaning as defined in Section
35 41302.5.

36 (d) When the Department of Justice ascertains that an
37 individual who is an applicant for employment by a school
38 district has been convicted of a violent or serious felony,
39 the department shall notify the school district of the
40 criminal information pertaining to the applicant. The

1 notification shall be delivered by telephone and shall be
2 confirmed in writing and delivered to the school district
3 by first-class mail.

4 (e) Notwithstanding subdivision (a), a person shall not
5 be denied employment or terminated from employment
6 solely on the basis that the person has been convicted of
7 a ~~crime specified in subdivisions (a)~~ *violent or serious*
8 *felony* if the person has obtained a certificate of
9 rehabilitation and pardon pursuant to Chapter 3.5
10 (commencing with Section 4852.01) of Title 6 of Part 3 of
11 the Penal Code.

12 (f) *Notwithstanding subdivision (e), a person shall not*
13 *be denied employment or terminated from employment*
14 *solely on the basis that the person has been convicted of*
15 *a serious felony that is not also a violent felony if that*
16 *person can prove to the sentencing court of the offense*
17 *in question, by clear and convincing evidence, that he or*
18 *she has been rehabilitated for the purposes of school*
19 *employment for at least one year. If the offense in*
20 *question occurred outside this state, then the person may*
21 *seek a finding of rehabilitation from the court in the*
22 *school district in which he or she is a resident.*

23 (g) *Notwithstanding any other provision of law, when*
24 *the Department of Justice notifies a school district by*
25 *telephone that a current temporary, substitute, or*
26 *probationary employee who has not attained permanent*
27 *status, has been convicted of a violent or serious felony,*
28 *that employee shall immediately be placed on leave*
29 *without pay. When the school district receives written*
30 *notification of the fact of conviction from the*
31 *Department of Justice, the employee shall be terminated*
32 *automatically and without regard to any other procedure*
33 *for termination specified in this code or school district*
34 *procedures unless the employee challenges the record of*
35 *the Department of Justice and the Department of Justice*
36 *withdraws in writing its notification to the school district.*
37 *Upon receipt of written withdrawal of notification from*
38 *the Department of Justice, the employee shall*
39 *immediately be reinstated with full restoration of salary*

1 *and benefits for the period of time from the suspension*
2 *without pay to the reinstatement.*

3 *(h) Notwithstanding Section 47610, this section*
4 *applies to a charter school.*

5 SEC. 5. The sum of five million dollars (\$5,000,000) is
6 hereby appropriated from the General Fund to the
7 Department of Justice for the purposes of implementing
8 an electronic fingerprinting system with terminals
9 located statewide and managed by the Department of
10 Justice. The statewide terminals shall be used to facilitate
11 electronic fingerprinting of all individuals required by
12 law to obtain a criminal history background check as a
13 condition of employment, licensing, or certification. One
14 terminal shall be located in the district office of each of
15 the three school districts that have both the largest
16 average daily attendance and a school district police
17 department.

18 SEC. 6. This act shall become operative only if
19 Assembly Bill 1610 of the 1997–98 Regular Session is
20 enacted.

21 SEC. 7. Notwithstanding Section 17610 of the
22 Government Code, if the Commission on State Mandates
23 determines that this act contains costs mandated by the
24 state, reimbursement to local agencies and school
25 districts for those costs shall be made pursuant to Part 7
26 (commencing with Section 17500) of Division 4 of Title
27 2 of the Government Code. If the statewide cost of the
28 claim for reimbursement does not exceed one million
29 dollars (\$1,000,000), reimbursement shall be made from
30 the State Mandates Claims Fund.

31 Notwithstanding Section 17580 of the Government
32 Code, unless otherwise specified, the provisions of this act
33 shall become operative on the same date that the act
34 takes effect pursuant to the California Constitution.

35 SEC. 8. This act is an urgency statute necessary for the
36 immediate preservation of the public peace, health, or
37 safety within the meaning of Article IV of the
38 Constitution and shall go into immediate effect. The facts
39 constituting the necessity are:

1 In order to protect the safety of pupils and school
2 employees, it is necessary for this act to take effect
3 immediately.

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